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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/216,545	12/18/1998	THOMAS HAROLD ROESSLER	14.541	9533
23556	7590	09/19/2005		
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			EXAMINER REICHLE, KARIN M	
			ART UNIT	PAPER NUMBER
			3761	
DATE MAILED: 09/19/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	09/216,545	ROESSLER ET AL.	
	Examiner	Art Unit	
	Karin M. Reichle	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 40-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 40-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/04 & 8/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 40-47 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over SCA '290 in view of Larsson PCT '463.

With regard to claims 40-46: See SCA '290 at Figures; page 9, lines 17-20; page 5, lines 9-11, the absorbent chassis; elements 28 and 4, page 7, lines 18-24, page 11, lines 11-15, the elastic back panel 13; page 5, line 19-page 6, line 10, page 7, lines 6-7, page 11, lines 11-15, elastic front panel 8 and separate 5 or unitary engaging portions; page 10, lines 10-11, the seam 17. The SCA device, includes all the claimed structure except for the releasable bond as set forth in subsection e) of claim 40 and the specifics thereof in the dependent claim 46. However, Larsson teaches a similar article which also includes a releasable bond in addition to a refastenable joint to improve reliability of maintaining the article in a prefastened condition particularly when it is being used, i.e. pulled on or off the hips, i.e. to maintain the shape of and put on like a pair of ordinary underpants, see, e.g., Figures, page 2, lines 1-24, page 5, line 25-page 7, line 10, page 7, lines 21-24, page 8, lines 21-23, e.g. "at least one point bond" as claimed, page 9, lines 10-12. To employ a releasable bond as taught by Larsson on the SCA device would be obvious to one of ordinary skill in the art in view of the recognition that such would improve the reliability of maintaining the prefastened condition during use and the desirability of such by SCA, attention is reinvited to page 9, lines 17-20 of SCA. With regard to claims 47 and 49, they

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are product by process claims. In accord with MPEP 2113, even if the product of the prior art combination is made by a different process, since the end product is obviously the same as the end product of claim 47, i.e. the end product is a weld whether ultrasonically formed or not, and claim 49, the claim does not distinguish over the prior art. See also discussion in Response to arguments section infra.

3. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over SCA '290 and Larsson as applied to claim 40 above, and further in view of Bruemmer '873.

SCA and Larsson teach all the claimed structure except for a releasable bond of a specific peel strength, i.e. no more than about 1500 grams, i.e. or in other words no more than the maximum force allowing opening or unfastening of the bond. However, Bruemmer at col. 4, line 55-col. 5, line 4 teaches fasteners having a maximum unfastening force of no more than about 1500 grams so as to permit an adult to open such fastener but to prevent a child from doing so. See also page 1, lines 10 et seq of SCA, i.e. use on babies or children and by adults or use on and by adults, and cited portions of Larsson supra, i.e. releasable bonds to prevent unintended opening. Therefore, to employ a releasable bond defining a peel strength of no more than 1500 grams on the SCA device would be obvious to one of ordinary skill in the art in view of the recognition that such would allow intended opening by adults and the desirability of such by the prior art.

Response to Arguments

4. Applicant's remarks on pages 9-10 of the 5-27-04 response with regard to formal matters have been considered but are deemed moot in that the issue has not been repeated.

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Applicant's remarks with regard to the prior art on pages 10-15 have been carefully considered but are deemed not persuasive. Applicant's argument is that the strip 8, if elastic, is laid flat over perforated line 6 and thus would not extend laterally from the side edges. However, as clearly shown in the Figures and described textually, the surplus of inelastic material 9, or, in the alternative, elasticity in the same region, allow separation of the chassis at 6 but the strips 8 and 13 remain intact so that a free zone 15, which is laterally outward of the side edges of such chassis, is created. Seam(s) between strips 8 and 13 are created in such zone 15 and then the zone is severed at 16 which is also laterally outward of the side edges, see especially Figures 4-7. Applicant should also note page 9, lines 6-7, i.e. laid flat elastic material is also present with the surplus 9 and is severed at line 16 beyond line 6 after separation at line 6 of the chassis.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Attention is invited to Romare, the PCT of which is already of record, teaches elastic panels 13-14 which can be integral or separate but connected from the rear part of the diaper and are separate from each other. Such panels are permanently connected to the rear portion but releasably connected to the front part by bonds and fasteners 15-17. Attention is also invited to Wood '732, also already of record, at col. 3, lines 33-63, i.e. side panel can have integral portions or seamed portions which portions are separate but joined or integral with the rear portion and joined to the front portion.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
September 14, 2005